

D.P.U. 95-40

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.P.U. Nos. 893 through 908, filed with the Department on March 15, 1995 to become effective April 1, 1995 by Massachusetts Electric Company.

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**ORDER ON APPEAL OF HEARING OFFICER RULING****I. INTRODUCTION**

On March 15, 1995, Massachusetts Electric Company ("MECo" or "Company") filed a petition with the Department of Public Utilities ("Department") for an general increase in revenues to be effective April 1, 1995. Alternatively, the Company proposed to implement an incentive rate plan in which the Company's rates would be adjusted annually based on the difference between the Company's rates and the rates of other Massachusetts electric companies. On March 23, 1995, the Department after review, consideration and study of the above-referenced filing, determined that further investigation was necessary and Ordered that the operation of the rates and charges set forth therein be suspended and the use thereof deferred until October 1, 1995.

Pursuant to notice duly issued, the Department scheduled public hearings and stated that any person who desires to participate in an adjudicatory proceeding concerning the Department's investigation must file a written petition for leave to intervene or to participate in the proceeding with the Department not later than seven days before April 18, 1995, the date of the first public hearing.<sup>1</sup> The Conservation Law Foundation ("CLF") filed a timely petition to intervene.<sup>2</sup>

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<sup>1</sup> The notice provided that a petition for leave to intervene must satisfy the timing and substantive requirements of 220 C.M.R. § 1.03, and that a late-filed petition may be disallowed as untimely, unless good cause is shown for a waiver of the seven-day rule under 220 C.M.R. § 1.01(4). To be allowed, a petition under 220 C.M.R. § 1.03(1) must satisfy the standing requirements of G.L. c. 30A, § 10.

<sup>2</sup> Pursuant to G.L. c. 12, § 11E, the Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention, and timely petitions to intervene or participate were filed by Cambridge Electric Light Company and Commonwealth Electric Company (together "ComEnergy"); Commonwealth Gas Company ("ComGas"); Western

In its petition, CLF stated that it is a private, non-profit environmental membership organization dedicated to the wise use of New England natural resources that are affected by the generation, transmission and distribution of electric power (Petition at 1). CLF also stated that, as ratepayers, many of its members reside in or near MECo's service territory and they will be substantially and specifically affected by the Department's decision on the rates and other proposals in this proceeding (*id.*). CLF stated that it has participated in numerous proceedings before the Department and has therefore gained substantial expertise and experience in electric utility policy and law, including ratemaking treatment and industry restructuring which are or may be at issue in this proceeding (*id.* at 2). CLF requested to participate as a party and stated that it may file testimony, present evidence, conduct cross-examination, and submit briefs (*id.* at 3).

On April 20, 1995,<sup>3</sup> the Hearing Officer issued a Ruling which found that CLF had not demonstrated that it was substantially and specifically affected by this proceeding,<sup>4</sup> and denied CLF's petition to intervene.<sup>5</sup> However, the Hearing Officer granted CLF status as a limited

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Massachusetts Electric Company ("WMECo"); Distrigas of Massachusetts Corporation ("Distrigas"); the Energy Consortium; Industrial Intervenors; Irving Burstein, Pearl Noorigan and Jeannie Stephenson ("Low-Income Intervenors"); and Milford Power Limited Partnership ("MPLP"). Late-filed petitions to intervene was filed by Wheeled Electric Power Company ("WEPCo"), and Jane Walton, a ratepayer of Nantucket Electric Company ("Nantucket").

<sup>3</sup> On April 20, 1995, the Hearing Officer conducted a prehearing conference and established a procedural schedule for evidentiary hearings. CLF did not attend this conference.

<sup>4</sup> The Hearing Officer Ruling noted that a petitioner's interest in a potentially precedential proceeding does not equate with being substantially and specifically affected by its outcome. See D.P.U. 94-102-1, at 7 (1994) (Order on Appeal of Hearing Officer Ruling).

<sup>5</sup> The Hearing Officer Ruling provided that persons aggrieved by the Rulings may appeal to the Commission by filing a written appeal, with supporting documentation by April 25, 1995, and that responses to any appeal must be submitted by April 28, 1995.

participant for the purpose of submitting comments or briefs relating to the Department's review of the Company's incentive plan.<sup>6</sup> On April 26, 1995, CLF filed an appeal of the Hearing Officer Ruling that denied intervention, but allowed limited participation.<sup>7</sup>

## II. CLF'S APPEAL

CLF states that the Hearing Officer erred in allowing limited participation rather than intervention status (Appeal at 1-2). CLF argues that its members will be substantially and specifically affected by the proceeding, both as ratepayers of the Company and as citizens affected by the environmental impact of the Company's power production activities (id.).

CLF asserts that this proceeding involves special circumstances, and that its petition to intervene describes the special expertise it brings to the proceeding (id. at 1). In support of its contention, CLF maintains that this proceeding involves the first utility-specific proposal for incentive or performance ratemaking submitted to the Department (id. at 3).<sup>8</sup> In addition, CLF argues that the proceeding involves precedential issues relating to retail customer access to alternative suppliers (id.). CLF contends that participation as a full party is essential to protect its

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<sup>6</sup> The Hearing Officer noted the Attorney General's intervention, and allowed the Energy Consortium, the Industrial Intervenors, Distrigas, MPLP, and the Low-Income Intervenors to participate as parties. In addition, the Hearing Officer allowed Jane Walton to participate as a limited participant for the purpose of submitting comments or briefs. Finally, the Hearing Officer allowed ComEnergy, ComGas, WMECo, and WEPCo to participate as limited participants for the purpose of submitting comments or briefs relating to the Department's review of the Company's incentive plan.

<sup>7</sup> On April 25, 1995, CLF submitted a motion for an extension of time to file an appeal of the Hearing Officer Ruling, and on April 28, 1995, the Hearing Officer granted CLF's request.

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members' interest in preserving environmental quality by promoting utility energy efficiency and renewable energy activities(id. at 4). In support for its contention, CLF asserts that the potential for change in the Company's investments in energy efficiency due to the outcome of this proceeding has direct, substantial and significant impact on its members (id. at 5).

CLF contends that its expertise relating to environmental impacts of utility operations, energy efficiency, and industry ratemaking justify full party status in this proceeding (id. at 6). In support of its contention, CLF argues that full participation is essential to the elucidation of the issues in this case within the statutory deadlines, and that its expertise and familiarity with the complex issues it raises will help expedite and focus the Department's review (id. at 6-7). CLF states that the Hearing Officer's reliance in D.P.,U. 94-102-1 is misplaced, and its interest is distinguished from that facts of that proceeding (id. at 7, n. 4).

CLF claims that its member's interest in sound utility operations and procedures will not adequately be represented by any other party to this proceeding, and that its members also potentially may lose their right to appeal substantive issues in the final Order in this proceeding (id. at 8).

### III. ANALYSIS AND FINDINGS

Pursuant to 220 C.M.R. § 1.03(1)(b), a petition for leave to intervene in a proceeding must describe the manner in which the petitioner is substantially and specifically affected by the proceeding. The Department may grant a petition to intervene as a party in the whole or any portion of a proceeding or may allow a person who is not a party to make a limited appearance as the Department may prescribe. 220 C.M.R. § 1.03(1)(e).

The Department has broad, but not unlimited, discretion to grant or deny participation in its proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, at 216-217 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, at 45-46 (1978). In exercising its discretion regarding intervention, the Department must balance the interest of an individual intervenor against the need to conduct an efficient proceeding. The Department operates under a statutory deadline when conducting rate proceeding, and extensive participation by an intervenor should be permitted only where justified. G.L. c. 25, § 18; see Boston Edison Company v. Department of Public Utilities, 375 Mass. at 46.

The Department must resolve the issue of whether CLF is substantially and specifically affected by this proceeding. Once the extent that this proceeding will affect the interests of CLF, the Department must balance the interests of CLF with the need to conduct an efficient proceeding within the statutory timeframe. CLF advances two basis arguments in support for its contention that it is substantially and specifically affected by this proceeding. First, CLF contends that this proceeding involves issues of precedential value, and its expertise will help elucidate these issues. In D.P.U. 94-102-1, at 7, the Department stated that a petitioner's interest in a potentially precedential proceeding does not equate with being substantially and specifically affected by its outcome. The Department notes CLF's expertise relating to the environmental impacts of utility operations, energy efficiency, and industry ratemaking.<sup>9</sup> However, the fact that

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<sup>9</sup> The Department conducted an inquiry into incentive regulation in which CLF was an active participant. See D.P.U. 94-158 (1995). In addition, the Department has instituted an inquiry into electric industry restructuring (D.P.U. 95-30), and has welcomed CLF's participation. The Department also notes CLF's participation in numerous integrated resource management and conservation and load-management proceedings.



this proceeding may contain issues of a potentially precedential value is not sufficient to demonstrate that CLF is substantially and specifically affected by its outcome.

In this proceeding, the Department's review consists of the incentive proposal and a traditional cost of service analysis. In order to conduct an efficient investigation, the Hearing Officer limited participation of persons interested in the incentive plan to submitting comments or briefs. Given the timeframe imposed by statute and the extent of investigation necessary in order to review all aspects of the Company's filing, the Department finds that the Hearing Officer exercised appropriate discretion in balancing the interests of CLF with the Department's need to conduct an efficient proceeding. The Department, by necessity, must limit participation with respect to the incentive proposal in order to conduct its review of all aspect of the Company's filing.<sup>10</sup>

CLF also contends that its members will be substantially and specifically affected by the environmental impact of the Company's power production activities, both as ratepayers of the Company and as citizens of the Commonwealth.<sup>11</sup> The Hearing Officer appropriately noted the fact that a petitioner is a ratepayer of a company is not sufficient to demonstrate that the petitioner is substantially and specifically affected by an adjudicatory proceeding. The concern expressed in Save the Bay v. Department of Public Utilities, 366 Mass. 667, at 672 (1975), that the multiplicity of parties and the increased participation by persons whose rights are at best

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<sup>10</sup> The Department notes that ComEnergy and WMECo also sought to participate as parties and the Hearing Officer limited participation.

<sup>11</sup> The Hearing Officer Ruling noted that the fact that a petitioner is a ratepayer of a company is not sufficient to demonstrate that the petitioner is substantially and specifically affected by an adjudicatory proceeding.

obscure will, in the absence of exact requirement as to standing, seriously erode the efficacy of the administrative process is sufficient notice.

The Department is unable to determine from its petition whether CLF is interested in issues presented in the Company's filing other than the incentive proposal. Therefore, CLF may amend its petition to clarify its interest in other issues in the Company's filing.<sup>12</sup> CLF's participation may help elucidate these issues.<sup>13</sup>

With respect to CLF claim that it may lose their right to appeal substantive issues if full party status is not granted, the Department has noted that granting full party status would be no guarantee that such appellate rights would in fact be secured. D.P.U. 94-102-1, at 8, citing *Save the Bay v. Department of Public Utilities*, 366 Mass. at 672.

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<sup>12</sup> The Department notes that CLF did not participate in the prehearing conference conducted on April 20, 1995. CLF must accept the procedural schedule as it has been established.

<sup>13</sup> The Hearing Officer stated that in this proceeding, the parties participation will benefit the proceeding, however, in future proceedings, petitioners may be required to demonstrate more than ratepayer status.

IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the appeal of the Hearing Officer Ruling by Conservation Law Foundation be and hereby is denied; and it is

FURTHER ORDERED: That the Conservation Law Foundation may amend its petition to intervene consistent with this Order.

By Order of the Department,

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Kenneth Gordon, Chairman

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Mary Clark Webster, Commissioner

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Janet Gail Besser, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).